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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/749,053      | 12/30/2003  | Martin J. Dowling    | I-2-0574US          | 7396             |

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VOLPE AND KOENIG, P.C.  
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UNITED PLAZA; SUITE 1600  
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PHILADELPHIA, PA 19103

EXAMINER

GARY, ERIKA A

ART UNIT

PAPER NUMBER

2681

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/749,053

Applicant(s)

DOWLING, MARTIN J.

Examiner

Erika A. Gary

Art Unit

2681

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 7-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-16 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-6, drawn to a mobile wireless monitoring device, classified in class 455, subclass 423.
  - II. Claims 7-12, drawn to a fixed wireless monitoring device, classified in class 455, subclass 67.11.
  - III. Claims 13-14, drawn to a method for analyzing channel conditions in a cell, classified in class 455, subclass 67.13.
  - IV. Claims 15-16, drawn to a method for selecting a site for a base station, classified in class 455, subclass 446.
2. The inventions are distinct, each from the other because of the following reasons:  
Groups I-IV have separate utility and require separate and distinct searches.
3. During a telephone conversation with Jeffrey Glabicki (Reg. No. 42,584) on September 15, 2005 a provisional election was made without traverse to prosecute the invention of Group 1, claims 1-6. Affirmation of this election must be made by applicant in replying to this Office action. Claims 7-16 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Claim Rejections - 35 USC § 102***

Art Unit: 2681

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Somoza et al., US Patent Number 6,336,035 (hereinafter Somoza).

Regarding claims 1 and 4, Somoza discloses a mobile wireless monitoring device comprising: an antenna for receiving signals from a monitored source; a channel quality measurement device for measuring a channel quality of the received signals; a location determining device for determining locations of the mobile wireless monitoring device; and a processor for storing the channel quality measurements and a location for the channel quality measurements using the determined locations [col. 2: lines 59-62; col. 8: lines 37-57; col. 9: lines 7-9; col. 5: lines 19-30, 54-62]

Regarding claims 2 and 5, Somoza discloses the channel quality measurements include received signal strength, interference and Doppler shift [col. 8: lines 48-50]

Regarding claims 3 and 6, Somoza suggests the mobile wireless monitoring device does not utilize outer loop power control when measuring the received signal strength [col. 8: lines 42-44].

6. Claims 1-6 are rejected under 35 U.S.C. 102(e) as being anticipated by Garceran et al., US Patent Number 6,522,888 (hereinafter Garceran).

Regarding claims 1 and 4, Garceran discloses a mobile wireless monitoring device comprising: an antenna for receiving signals from a monitored source; a channel quality measurement device for measuring a channel quality of the received signals; a location determining device for determining locations of the mobile wireless monitoring device; and a processor for storing the channel quality measurements and a location for the channel quality measurements using the determined locations [col. 2: lines 7-42; col. 3: lines 15-32; col. 6: lines 32-58]

Regarding claims 2 and 5, Garceran discloses the channel quality measurements include received signal strength, interference and Doppler shift [col. 4: lines 8-20]

Regarding claims 3 and 6, Garceran suggests the mobile wireless monitoring device does not utilize outer loop power control when measuring the received signal strength [col. 4: lines 15-20].

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Knippelmier, US Patent Number 5,425,076, discloses a cellular communications test system.

Hirose et al., US Patent Number 6,064,890, disclose a mobile communication apparatus with improved base station monitoring.

Sanders et al., US Patent Number 6,754,487, disclose a radio network test analysis system.

Lahav et al., US Patent Application Publication Number 2004/0203725, disclose classification of cellular network drive test results.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Erika A. Gary whose telephone number is 571-272-7841. The examiner can normally be reached on Monday-Thursday and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Feild can be reached on 571-272-4090. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EAG  
September 15, 2005

  
ERIKA A. GARY  
PRIMARY EXAMINER